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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,615	09/13/2004	Kiyokazu Tanaka	258249US3XPECT	4393
22850	7590	06/27/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER AVERY, BRIDGET D				
ART UNIT		PAPER NUMBER		
3618				
NOTIFICATION DATE		DELIVERY MODE		
06/27/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/506,615

**Applicant(s)**

TANAKA ET AL.

**Examiner**

BRIDGET AVERY

**Art Unit**

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 4/03/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 2, 4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Laid Open No. Hei11-269923 in view of Japanese Patent Laid Open No. 2001-295319.

Hei11-269923 teaches a small swing type excavator including a rotation working machine installed on a traveling device rotatably around a shaft, devices installed on a rotation base of the rotation working machine, the devices on a rear part include a hydraulic pump, an engine, a battery, a radiator and an oil cooler. The devices on a front side include a control valve and a hydraulic oil tank aligned on the left or right side taking a swivel joint as a center and a fuel tank is arranged on the other side.

Hei11-269923 lacks the teaching of a fuel tank including an extension portion extending to the front surface of an air conditioner.

2001-295319 teaches an air conditioner arranged on a lower side of a floor of the operator cab near the fuel tank.

Based on the teachings of 2001-295319, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to configure the

excavator by providing the air conditioner near the fuel tank to make best use of the limited space.

2. Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hei11-269923 and 2001-295319 as applied to claims 1 and 4 above, and further in view of Japanese Patent Laid Open Hei11-269931.

Hei11-269923 and 2001-295319 teach the features above. Note, the swinging motor is disposed in front of the swivel joint.

Hei11-269923 and 2001-295319 lack the teaching of a control valve disposed on the other end side of the fuel tank.

Hei11-269931 teaches a control valve on the other end from a fuel tank.

Based on the teachings of Hei11-269931, it would have been obvious to one having ordinary skill in the art to add a control valve on the other end side from the fuel tank to make effective use of the space.

3. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hei11-269923 and 2001-295319 as applied to claims 1, 4 and 10 above, and further in view of Japanese Patent Laid Open No 2001-323500.

Hei11-269923 and 2001-295319 teach the features above.

Hei11-269923 and 2001-295319 lack the teaching of an opening and a cover.

2001-323500 teaches an opening and a lid to cover the opening.

Based on the teachings of 2001-323500, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to provide an opening for maintenance and a lid/cover to cover the opening for safety.

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4. Claims 10-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hei11-269923 in view of 2001-295319 and Japanese Patent Laid Open Hei11-269931.

Hei11-269923 and 2001-295319 teach the features above. Note, the swinging motor is disposed in front of the swivel joint.

Hei11-269923 and 2001-295319 lack the teaching of a control valve disposed on the other end side of the fuel tank.

Hei11-269931 teaches a control valve on the other end from a fuel tank.

Based on the teachings of Hei11-269931, it would have been obvious to one having ordinary skill in the art to modify the combination of Hei11-269923 and 2001-295319 by adding a control valve on the other end side from the fuel tank to make effective use of the space.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hei11-269923, 2001-295319 and Hei11-269931 as applied to claims 14 above, and further in view of Japanese Patent Laid Open Hei11-200416.

Hei11-269923, 2001-295319 and Hei11-269931 teach the features described above.

Hei11-269923, 2001-295319 and Hei11-269931 lack the teaching of a switching valve.

Hei11-200416 teaches a switching valve.

Based on the teachings of Hei11-200416, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to add a switching valve to improve operation of the excavator.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIDGET AVERY whose telephone number is (571)272-6691. The examiner can normally be reached on Monday through Thursday from 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis, can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher P Ellis/  
Supervisory Patent Examiner, Art  
Unit 3618

/Bridget Avery/

Examiner, Art Unit 3618